

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-016229

08/30/2013

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nelson
Deputy

CYNTHIA D BECKETT, et al.

MICHAEL C SHEEDY

v.

ST JOSEPHS HOSPITAL AND MEDICAL
CENTER, et al.

RICHARD K DELO
J RUSSELL SKELTON

RULING

The Court has had under advisement (i) Forseth Defendants' Motion for Directed Verdict/Judgment as a Matter of Law (re A.R.S. § 12-2604), and (ii) Crandall Defendants' Motion for Directed Verdict/Judgment as a Matter of Law (re A.R.S. § 12-563(2)) and Forseth Defendants' joinder therein. *See* Ariz. R. Civ. P. 50(a). Having heard oral argument, the Court issues the following rulings.

I.

Forseth Defendants argue that Dr. D'Alessio is not qualified under A.R.S. § 12-2604(A)(2) because the "majority of [his] professional time" was not devoted to active clinical practice or instruction of students. The Court disagrees. Dr. D'Alessio testified that he devotes 35-40% of his professional time to active clinical practice and 20% to instruction of students. That his clinical practice and instruction might overlap is not problematic with regard to his qualifications under subsection (A)(2). The intent of § 12-2604(A) is that the treating physician and the expert testifying on standard of care have "comparable training and experience." *Baker*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-016229

08/30/2013

v. Univ. Physicians Healthcare, 231 Ariz. 379, 383 (2013). The Court finds that Dr. D'Alessio is qualified under § 12-2604(A)(2).¹ Accordingly,

IT IS ORDERED denying Forseth Defendants' Motion for Directed Verdict/Judgment as a Matter of Law (re A.R.S. § 12-2604).

II.

Defendants argue that Plaintiffs have failed to establish that Defendants' failure to diagnose and treat Plaintiff's infection was the proximate cause of her injuries as identified below. *See* A.R.S. § 12-563(2).

Plaintiffs are required to establish proximate cause by expert medical testimony. *Salica v. Tucson Heart Hosp.-Carondelet L.L.C.*, 224 Ariz. 414, 419 (App. 2010), *citing Gregg v. Nat'l Med. Health Care Servs., Inc.*, 145 Ariz. 51, 54 (App. 1985); *see Benkendorf v. Advanced Cardiac Specialists Chartered*, 228 Ariz. 528, 530 (App. 2012). Although causation is generally a question of fact for the jury to resolve, *see Gipson v. Kasey*, 214 Ariz. 141, 143 (2007); *Barrett v. Harris*, 207 Ariz. 374, 378 (App. 2004), Plaintiffs cannot leave causation to the jury's speculation. *Salica v. Tucson Heart Hosp.-Carondelet L.L.C.*, 224 Ariz. 414, 419 (App. 2010); *see Robertson v. Sixpence Inns of Am., Inc.*, 163 Ariz. 539, 546 (1990).

Dr. Vance testified that, had Plaintiff's infection been properly diagnosed and treated at St. Joseph's Hospital, the progression of the infection would not have turned septic and she would not have had the long-term Flagstaff hospitalization. He did not, however, testify that Plaintiff's symptoms of leg and tailbone pain, pelvic numbness, or post-traumatic stress were proximately caused by the progression of the infection (v. the infection itself or an unrelated cause). Plaintiffs do not dispute this, but contend that Dr. Martin testified as to proximate causation with regard to these symptoms. As to the post-traumatic stress, the Court agrees. (*See* Aug. 23, 2013 Tr. at 27-29.) As to the leg and tailbone pain and pelvic numbness, the Court disagrees. Although Dr. Martin testified as to these symptoms generally, she did not testify that they were caused by the progression of the infection or the resulting extended hospitalization. Accordingly,

IT IS ORDERED granting in part and denying in part Crandall Defendants' Motion for Directed Verdict/Judgment as a Matter of Law (re A.R.S. § 12-563(2)) and Forseth Defendants' joinder therein.

¹ With regard to Forseth Defendants' oblique argument that Dr. D'Alessio is not qualified because he was not board certified until 2012, the Court notes that A.R.S. § 12-2604(A)(1) does not require that the expert be board certified at the time of the occurrence.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-016229

08/30/2013

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.